

# Disciplinary and Other NASD Actions

## REPORTED FOR AUGUST

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of July 2005.

### Firms Fined, Individuals Sanctioned

**David A. Noyes & Company (CRD #205, Chicago, Illinois) and Anthony Michael Quirini (CRD #369593, Registered Principal, Kenilworth, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000, jointly and severally with Quirini. The firm was fined an additional \$30,000, and must obtain a "no objection" letter from the NASD Advertising Regulation Department on any proposed sales literature or advertising prior to its use for one year. Quirini was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the firm and Quirini consented to the described sanctions and to the entry of findings that Quirini created and distributed sales literature in the manner of form letters to the public that the firm failed to file with NASD's Advertising Regulation Department. NASD found that these form letters contained statements that exaggerated the safety of the products and failed to reflect the risks of fluctuating prices and the uncertainty of rates of return and the yield of investments.

The findings stated that the form letters failed to provide balanced presentations of the risks and rewards of the products offered, failed to disclose material information regarding the risks of each proposed investment, and failed to provide a sound basis for evaluating the recommendations contained in the letters. The findings also stated that the firm failed to adequately and properly supervise the use of these form letters and failed to establish, maintain, and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations.

Quirini's suspension began July 18, 2005, and concluded at the close of business July 29, 2005. (NASD Case # C8A050058)

**Jersey Shore Trading Group, Inc. (CRD #47440, Red Bank, New Jersey) and John F. Helbock (CRD #1593811, Registered Principal, Holmdel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000, \$15,000 of which was jointly and severally with Helbock. Helbock was suspended from association with any NASD member in any principal or supervisory capacity for 30 business days. Without admitting or denying the allegations, the firm and Helbock consented to the described sanctions and to the entry of findings that the firm, acting through Helbock, permitted a statutorily disqualified person to be associated with and conduct activities on behalf of the firm. NASD also found that the

firm executed order tickets for equity and municipal transactions that were deficient. The findings also stated that the firm was late in reporting municipal securities transactions executed by the firm.

Helbock's suspension began July 5, 2005, and will conclude at the close of business August 15, 2005. (NASD Case #C9B050038)

**Stoeveer, Glass & Company Inc., (CRD # 7031, New York, New York) and Michael Francis Carrigg (CRD #1061325, Registered Principal, Sandy Hook, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$7,500, jointly and severally. The firm was fined an additional \$5,000, and Carrigg was suspended from association with any NASD member in any financial and operations principal (FINOP) capacity for 10 business days. Without admitting or denying the allegations, the firm and Carrigg consented to the described sanctions and to the entry of findings that the firm commingled customer securities with non-customer securities to collateralize bank loans. The findings also stated that the firm, acting through Carrigg, collateralized the loan set up for firm trades with a customer security position that was not fully paid and permitted a customer's fully paid securities to remain in a non-control location for an extended period of time. In addition, NASD determined that the firm neglected to report to the Trade Reporting and Compliance Engine (TRACE) the underlying yield to inter-dealer corporate debt security transactions. NASD also found that the firm failed to make a timely transaction report to TRACE.

Carrigg's suspension began July 5, 2005, and concluded at the close of business July 18, 2005. (NASD Case #C10050045)

**Strasbourg Pearson Tulcin Wolff Inc. (CRD #5133, New York, New York) and Michael J. Schumacher (CRD #415895, Registered Principal, Purchase, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$12,500, jointly and severally. The firm was censured and fined an additional \$17,500, and Schumacher was suspended from association with any NASD member in all principal capacities for 15 business days. Without admitting or denying the allegations, the firm and Schumacher consented to the described sanctions and to the entry of findings that the firm, acting through Schumacher, failed to establish and maintain a supervisory system, including adequate written supervisory procedures, reasonably designed to achieve compliance by the firm and its representatives with numerous NASD rules. The findings also stated that the firm, acting through Schumacher, permitted a registered representative to conduct a securities business while his registration was inactive. In addition, NASD determined that the firm failed to conduct independent testing of its anti-money laundering (AML) compliance programs, collect all

required information for wire order/transfers, review wire orders, and verify the identities of customers who open accounts in violation of NASD Rules 2110 and 3011.

Schumacher's suspension began July 5, 2005, and concluded at the close of business July 25, 2005. (NASD Case #C07050040)

## Firm and Individual Fined

**Coburn & Meredith, Inc. (CRD #164, Hartford, Connecticut) and Barry Mohun Coburn (CRD #49264, Registered Principal, West Simsbury, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. The firm was fined an additional \$7,500, \$5,000 of which was assessed jointly and severally with another individual. Without admitting or denying the allegations, the firm and Coburn consented to the described sanctions and to the entry of findings that the firm, acting through an individual, failed to comply with their claimed exemption under Section 15c of the Exchange Act, Rule 15c3-3(k)(2)(ii) in that the firm received checks made payable to the firm rather than to the firm's clearing firm. NASD also found that the firm, acting through an individual, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its required minimum net capital. NASD determined that the firm, acting through Coburn, failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding the receipt of customer checks. The findings also stated that the firm was late in filing municipal securities transaction reports to the Municipal Securities Rulemaking Board (MSRB). In addition, NASD found that the firm, acting through Coburn, sent confirmations to customers involving municipal transactions that improperly disclosed to the customer that the firm was acting in a principal capacity when, in fact, the transactions effected involved cross trades between the customer and another person. (NASD Case #C11050018)

## Firms Fined

**Ariel Distributors, Inc. (CRD #38333, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it used the mails or other means of interstate commerce to effect transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm prepared inaccurate trial balances, general ledgers,

and net capital computations. NASD also found that the firm filed FOCUS (Financial and Operational Combined Uniform Single) IIA reports and an annual audit that overstated the member's net capital. In addition, NASD found that the firm failed to implement and exercise adequate supervisory controls to monitor and verify the accuracy of the amounts of 12b-1 fees payable that were computed by a non-affiliated entity that resulted in inaccurate net capital computations. **(NASD Case #C8A050056)**

**Chicago Investment Group, L.L.C. (CRD #11853, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$22,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it used the mails or other means or instrumentalities of interstate commerce to effect transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm prepared inaccurate trial balances, general ledgers, and net capital computations. The findings also stated that the firm filed FOCUS IIA reports that overstated the member's net capital. NASD found that the firm failed to prepare and maintain adequate written supervisory procedures to ensure that employees whose registrations were subject to numerous strict supervisory guidelines and restrictions by several state securities regulators remained in compliance with those restrictions. NASD also found that the firm failed to obtain NASD approval prior to effecting a material change in business operations in that the firm increased the number of associated persons involved in sales activities beyond the limits delineated in IM-1011-1. **(NASD Case #C8A050052)**

**CJS Securities, Inc. (CRD #44823, White Plains, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted its analysts to sell securities issued by companies for which the analysts were primarily responsible for research coverage at times when the firm's recommendation was to buy or hold the security. The findings stated that the firm's analysts bought or sold securities issued by companies for which the analysts were primarily responsible for research coverage during a period of time prior to or after the issuance of research reports concerning those companies. The findings also stated that the firm issued research reports covering companies from which the firm had received, or expected to receive, compensation for investment banking services in connection with participation in public offerings of the companies' securities. NASD found that the firm did not have written supervisory procedures reasonably designed to achieve compliance with NASD Rule 2711. **(NASD Case #C3A050031)**

**Equity Trading Online, LLC (CRD #104038, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,500, \$6,000 of which was jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to park his registration with the firm by maintaining his registration as a general securities representative through his purported association with the firm when, in fact, he was not actively involved in the firm's securities or investment banking business or otherwise functioning as a representative of the firm. NASD found that the firm, acting through an individual, failed to designate properly a branch office as an Office of Supervisory Jurisdiction (OSJ). In addition, NASD determined that the firm inaccurately reported to the MSRB the capacity for transactions by publishing an extraneous transaction report, failing to timely report transactions, and inaccurately reporting inter-dealer transactions as customer transactions. The findings also stated that the firm failed to report accurately the capacity on certain customer confirmations. **(NASD Case #C10050057)**

**The Huntington Investment Company (CRD #16986, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it paid non-cash compensation for a sales contest that weighted the firm's proprietary mutual funds and variable annuity products more than other investment products offered by the firm. **(NASD Case #C8A050063)**

**LaSalle Street Securities, LLC (CRD #7191, Elmhurst, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$125,000, and required to disgorge \$46,500 and pay \$46,281.84 in restitution. The firm was also required to certify to NASD, within 90 days, that it has reviewed its procedures regarding market timing and the preservation and retention of electronic mail communications, and that it has established systems and procedures reasonably designed to achieve compliance with applicable laws, regulations, and rules relating to market timing activities and the preservation and retention of electronic mail communications.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, through a registered representative, facilitated deceptive market timing practices in the sub-accounts of variable annuities for a hedge fund client by enabling the hedge fund client to use accounts to carry out frequent transfers among the sub-accounts of variable annuities without being detected, despite their attempts to enforce restrictions on market timing to protect the interest of

long-term investors. NASD found that the firm continued to sell variable annuity policies to the hedge fund client after receiving written notice that the client's trading strategy was considered disruptive and contrary to the interest of long-term investors. NASD determined that the fund client was able to execute transfers in the sub-accounts that yielded profits in excess of \$46,000 at the expense of long-term investors. The findings stated that the the firm did not maintain adequate written supervisory procedures to address market timing and failed to implement a supervisory system designed to monitor the activity of its associated persons with regard to market timing. In addition, NASD found that the firm failed to preserve for three years, and/or to preserve in an accessible place for two years, electronic mail communications received and sent by its agents and employees that related to its business as a broker or dealer. The findings also stated that the firm lacked adequate systems or procedures for the preservation of all electronic mail communications. **(NASD Case #CE2050012)**

**McLaughlin, Piven, Vogel Securities, Inc. (CRD #7404, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to TRACE late, reported principal transactions to TRACE as agency transactions, reported inter-dealer transactions to TRACE as customer transactions, and failed to report to TRACE the cancellation of transactions. The findings also stated that the firm failed to have adequate written procedures to ensure compliance with TRACE reporting requirements and failed to monitor adequately its trade reporting to ensure compliance with TRACE reporting requirements. The findings further stated that the firm failed to develop and implement an anti-money laundering (AML) program reasonably designed to achieve and monitor compliance with the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of Treasury. **(NASD Case #C10050055)**

**Mid-Ohio Securities Corp. (CRD #6634, Elyria, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to have its AML compliance program approved in writing by a member of the firm's senior management. The findings also stated that the firm's AML supervisory procedures were deficient or failed to address certain issues. The findings further stated that the firm failed to establish an adequate customer identification program based on its failure to meet specific criteria outlined under the PATRIOT Act and the Bank

Secrecy Act regarding reliance on another financial institution to identify potentially problematic customers. In addition, NASD determined that the firm failed to establish an independent testing function for its AML program. **(NASD Case #C04050025)**

**Multitrade Securities LLC (CRD #47485, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a registered person to act in a capacity that required registration while that person's registration status with NASD was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement. NASD also found that the firm failed to show the required time of receipt, entry, and/or execution of order tickets. In addition, NASD determined that the firm conducted a securities business while failing to maintain its minimum net capital after its debt to debt-equity ratio had exceeded 70 percent for a period greater than 90 days. **(NASD Case #C10050056)**

**Nalico Equity Corporation (CRD #15530, Giessen, Germany)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to create and maintain a complete and accurate itemized daily record of all receipts and disbursements of funds and purchases and sales of securities. The findings stated that the firm's net capital computation was inaccurate several times because it mischaracterized as an allowable asset controlled by persons no longer associated with the firm. The findings also stated that the firm did not maintain its daily record of all receipts and disbursements of funds and of purchases and sales of securities and ledgers reflecting debits and credits and did not maintain its checkbooks, bank statements, cancelled checks, and bank account reconciliations as required by SEC and NASD rules and regulations.

NASD found that the firm's supervisory system and procedures were inadequate with respect to annual compliance interviews, obtaining suitability information, compliance with financial recordkeeping rules, monitoring employee transactions at firms other than Nalico Equity Corporation, compliance with Regulation S-P, detecting and preventing unauthorized transactions, enforcing NASD Conduct Rule 3060 regarding gifts and gratuities, timely and accurate submission of Forms U4 and U5, and monitoring mutual fund transactions for unsuitable "B" share recommendations and violations of rules governing non-cash compensation. In addition, the findings stated that the firm did not maintain a



current firm element continuing education program in that its needs analysis and training plan were not updated annually and its firm element training included only participation in the annual compliance interview. Furthermore, the findings stated that the firm's AML test was not independent, and its AML program was not approved by senior management after the customer identification program provisions became effective, and was not reasonably designed to achieve compliance with all aspects of the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #C3A050032)

**Pershing Trading Company L.P. (CRD #36671, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported TRACE eligible securities transactions late or containing inaccurate information. The findings also stated that the firm failed to establish written policies, procedures, and internal controls reasonably designed to achieve compliance with all requirements imposed by the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #C9B050041)

**Securian Financial Services, Inc. (CRD #15296, Saint Paul, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to supervise adequately and properly a registered representative with respect to his recommendations to public customers. (NASD Case #C8A050068)

**Spectrum Asset Management, Inc. (CRD #18217, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement a written AML program and internal controls reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. The findings also stated that the firm failed to have its AML procedures approved, in writing, by a member of the firm's senior management, have independent testing conducted on its AML program, and designate the firm's AML compliance officer in its procedures. (NASD Case #C3A050037)

**VSR Financial Services, Inc. (CRD #14503, Overland Park, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm established and maintained a supervisory system designed to prevent and detect excessive trading in

customer accounts that was deficient. The findings also stated that the firm's written supervisory procedures failed to specify expressly the action to be taken if the individual reviewing the exception reports discovered "red flags" indicating excessive trading. (NASD Case #C04050029)

**Zions Investment Securities, Inc. (CRD #17776, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report in a timely manner customer grievances required to be reported with quarterly statistical information or to be reported no more than 10 days following the firm's discovery of the grievances. NASD also found that the firm failed to amend Forms U4 and U5 as required, and that registered representatives of the firm failed to participate in a required annual compliance interview. The findings also stated that registered representatives of the firm did not complete one or both of two components of the required firm element continuing education program developed by the firm.

The findings further stated that the firm settled a customer complaint by means of a settlement agreement that contained language implying that the customer could not voluntarily assist NASD or any self-regulatory organization with respect to the subject matter of the settlement. Furthermore, NASD found that the firm utilized two forms of written supervisory procedures that evidenced two forms of supervisory systems, both of which were not reasonably designed to achieve compliance with the reporting obligations of NASD Rule 3070, requirements to amend Forms U4 and U5, requirements to monitor for compliance with variable annuity and mutual fund compensation rules, rules pertaining to retail transaction in fixed income securities and corporate bond trading, continuing education provisions, SEC Rule 15c2-12, and the requirements for office inspections in NASD Conduct Rule 3010. In addition, NASD found that the firm did not enforce its supervisory system and procedures relating to annual compliance interviews, firm element continuing education, office inspections, and advertising and sales literature reviews. (NASD Case #C3A050027)

## Individuals Barred or Suspended

**Juan Carlos Alb (CRD #4182760, Registered Representative, Stafford, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Alb consented to the described sanction and to the entry of findings that he agreed to deposit \$18,200 in cash received from another person into a bank account that Alb maintained at a bank

where he worked, made two separate deposits of less than \$10,000 on separate days to his account at the bank, and then gave the person from whom he had received the cash a check for \$18,500. The findings also stated that Alb intended to prevent the bank from filing a currency transaction report as required by federal law for any cash deposit exceeding \$10,000. (NASD Case #C9A050026)

**Nicholas Apodikos (CRD #1595927, Registered Representative, Brighton, Massachusetts)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Apodikos consented to the described sanction and to the entry of findings that he induced a public customer to withdraw \$60,000 in the form of checks from her brokerage account and to sell her shares in a mutual fund to purchase a tax-free investment. The findings also stated that the checks were made payable to a third party who cashed the checks and split the proceeds with Apodikos. (NASD Case #C11050002)

**Carlos Aponte, Jr. (CRD #4211338, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Aponte willfully failed to amend his Form U4 to disclose a material fact. The findings also stated that Aponte failed to respond to NASD requests for information. (NASD Case #C07050006)

**Randall Patrick Aungst (CRD #2476968, Registered Representative, Saline, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Aungst reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Aungst consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, failed to give written notice of his intention to engage in such activities to his member firm, and failed to receive written approval from his member firm prior to engaging in such activities.

Aungst's suspension began August 1, 2005, and will conclude at the close of business July 31, 2006. (NASD Case #C8A050070)

**Hoyit Allen Bacon (CRD# 1974347, Registered Principal, Bixby, Oklahoma)** submitted an Offer of Settlement in which he was censured, fined \$5,000, ordered to pay \$11,793.59 in restitution to a public customer, and suspended from association with any NASD member in any capacity for one year. The fine and restitution must be paid before Bacon reassociates with any NASD member following the suspension

or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bacon consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing written notice to his member firm. The findings also stated that Bacon violated standards of commercial honor and just and equitable principles of trade by billing one client for the same advisory services under both an agreement with his member firm and through his outside business.

Bacon's suspension began August 1, 2005, and will conclude at the close of business July 31, 2006. (NASD Case #C05050010)

**Charles Gabriel Bourdreaux, IV (CRD #3231717, Registered Representative, Lafayette, Louisiana)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bourdreaux consented to the described sanction and to the entry of findings that he engaged in a scheme to evade federal cash reporting requirements by advising the purchase of multiple money orders in amounts less than \$3,000 and causing money orders totaling \$11,650 to be deposited into a brokerage account maintained at his member firm. The findings also stated that Bourdreaux failed to respond to NASD requests for information. (NASD Case #C05050014)

**Fredericia Joyce Brant (CRD #2893512 Registered Representative, Westerville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any member of NASD in any capacity for three months. The fine must be paid before Brant reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brant consented to the described sanctions and to the entry of findings that she failed to disclose material information on her Form U4.

Brant's suspension began July 18, 2005, and will conclude at the close of business October 17, 2005. (NASD Case #C8A050059)

**Michael Robert Brooks (CRD #2086694, Registered Representative, Bainbridge Island, Washington)** was barred from association with any NASD member in any capacity and ordered to pay \$8,740, plus interest, in restitution to a public customer. The sanctions were based on findings that Brooks received \$8,740 from a public customer for investment purposes and, without the customer's knowledge or consent, deposited the funds into a bank account he controlled, thereby converting the customer's funds to his own use and benefit. The findings also stated that Brooks failed to respond to NASD requests for

information. (NASD Case #C3B040035)

**Vincent Anthony Buchanan (CRD #34247, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any member of NASD in any capacity for 20 business days. Without admitting or denying the allegations, Buchanan consented to the described sanctions and to the entry of findings that member firms, acting through Buchanan, engaged in the securities business while failing to have and maintain sufficient net capital.

Buchanan's suspension began July 18, 2005, and concluded at the close of business August 12, 2005. (NASD Case #C10050050)

**Mark Bradley Clausen (CRD #1752792, Registered Representative, Burbank, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Clausen consented to the described sanction and to the entry of findings that he misappropriated insurance premiums from public customers totaling \$5,307.41. (NASD Case #C02050046)

**David Edward Cook (CRD #2503250, Registered Principal, Warren, Ohio)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cook consented to the described sanction and to the entry of findings that he affixed the signatures of public customers to Individual Retirement Account (IRA) distribution forms and submitted the forms to a clearing firm to cover margin calls in the customers' accounts as an accommodation. The findings stated that Cook, in response to NASD requests for information, submitted to NASD falsified IRA distribution forms purportedly signed by the customers to support his claims that the customers authorized IRA distributions to cover margin calls. The findings also stated that Cook failed to respond to NASD requests for information. (NASD Case #C8A050030)

**Kevin Edward Davis (CRD #1643435, Registered Principal, Columbia, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, jointly and severally, and suspended from association with any NASD member in a FINOP capacity for 15 business days. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that a member firm, acting through Davis, used the means or instrumentalities of interstate commerce or the mails to effect transactions in non-exempt securities while failing to maintain a minimum required net capital. NASD also found that Davis,

acting on behalf of his firm, filed materially inaccurate FOCUS Reports with NASD that failed to include the firm's liability amounts relating to an unsatisfied arbitration award and materially overstated the firm's net capital.

Davis' suspension began July 18, 2005, and concluded at the close of business August 5, 2005. (NASD Case #C9A050033)

**Robert Eugene Donley, Jr. (CRD #4689962, Associated Person, Perry, Michigan)** was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine shall be due and payable when and if Donley seeks to re-enter the securities business. The sanctions were based on findings that Donley willfully failed to disclose a material fact on his Form U4.

Donley's suspension began June 20, 2005, and will conclude at the close of business June 19, 2006. (NASD Case #C8A040112)

**Sean Everett Falk (CRD #2961005, Registered Principal, Mount Airy, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Falk consented to the described sanctions and to the entry of findings that he engaged in a business activity for compensation outside the scope of his relationship with his member firm without providing his firm prompt written notice of the activity.

Falk's suspension began August 1, 2005, and will conclude at the close of business August 30, 2005. (NASD Case #C9A050036)

**Joe Manuel Fernandez (CRD #3015002, Registered Principal, Villa Park, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Fernandez reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fernandez consented to the described sanctions and to the entry of findings that he learned that another registered representative of his member firm had impersonated him and had completed the firm element continuing education training module in his place. The findings stated that Fernandez also learned that the other registered representative had submitted a completion certificate to the firm falsely indicating that Fernandez had completed the training module, causing the firm's books and records to be inaccurate. NASD also found that Fernandez failed to take any action to correct the firm's books and records or to report the other representative's misconduct.

Fernandez' suspension began August 1, 2005, and will conclude at the close of business January 30, 2007. (NASD Case #C02050051)

**Valerie Marie Fricke (CRD #4572380, Associated Person, Jacksonville, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fricke consented to the described sanction and to the entry of findings that she converted \$129,986 from public customers. (NASD Case #C07050039)

**John J. Gariepy, Jr. (CRD #3200145, Registered Representative, Scranton, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gariepy consented to the described sanction and to the entry of findings that he caused his firm to issue checks totaling \$43,400 to a public customer drawn against the customer's securities account without the customer's knowledge or authorization, caused the checks to be delivered to him, forged the customer's signature on the checks, negotiated the checks, and used the bulk of the funds to his own use and benefit. The findings also stated that Gariepy failed to respond to NASD requests for information. (NASD Case #C9A050027)

**Todd Grafenauer (CRD #4408817, Registered Representative, Mukwonago, Wisconsin)** was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Grafenauer falsified internal documentation so that he would be able to utilize uncompensated interns to promote his securities business and that of his partner. (NASD Case #C8A030068)

**Alvin Waino Gebhart, Jr. (CRD #1005905, Registered Principal, Fallbrook, California)** and **Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California)**. Gebhart, Jr. was barred from association with any NASD member in any capacity. Donna Gebhart was fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam before re-entering the securities industry. The sanctions were imposed by the NAC following its call for review of an OHO decision. The sanctions were based on findings that the respondents sold unregistered securities that were not exempt from registration; engaged in private securities transactions without providing written notice to, or receiving written approval from, their firm; and recklessly omitted material facts in connection with the sales of securities.

Gebhart Jr. and Donna Gebhart have appealed this decision to the United States Securities Exchange Commission (SEC) and the sanctions, except for the bar, are not in effect pending review. (Case #C02020057)

**David Augustus Green (CRD #2787039, Registered Principal, Coral Springs, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Green consented to the described sanction and to the entry of findings that he effected, or caused to be effected, transactions in the accounts of public customers without the customers' prior authorization. (NASD Case #C07040084)

**Kerry John Grinkmeyer (CRD# 2267687, Registered Principal, Birmingham, Alabama)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in a general securities principal capacity for one month. The fine must be paid before Grinkmeyer reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Grinkmeyer consented to the described sanctions and to the entry of findings that he failed to perform certain supervisory duties, including delegating certain compliance responsibilities to his unregistered assistant, failed to show evidence of review of and follow-up on certain exception reports, and failed to provide copies to his firm of certain executed forms. In addition, registered representatives assigned to Grinkmeyer's Office of Supervisory Jurisdiction (OSJ) effected all transactions under his advisor number and, as a result, neither Grinkmeyer nor his firm could monitor the activity of individual registered representatives.

Grinkmeyer's suspension began August 1, 2005, and will conclude at the close of business September 1, 2005. (NASD Case #C05050022)

**Garik Hakobyan (CRD #4651839, Associated Person, Glendale, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Hakobyan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hakobyan consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Hakobyan's suspension began July 18, 2005, and will conclude at the close of business July 17, 2006. (NASD Case #C02050044)



**John Herbert Herzog (CRD #1515035, Registered Principal, Orland Park, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 90 days, and fined \$59,300.22, including disgorgement of \$44,300.22, representing, in part, commissions charged back as a result of market timing activity and certain expenses incurred with the variable annuity business of a hedge fund client. Without admitting or denying the allegations, Herzog consented to the described sanctions and to the entry of findings that he facilitated deceptive practices regarding market timing in the sub-accounts of variable annuities for a hedge fund client that purported to manage money for wealthy individuals and corporate entities they established for that purpose. The hedge fund client used a number of different accounts to purchase variable annuity contracts from an insurance company, and enabled the hedge fund client to use these accounts to carry out frequent transfers among the sub-accounts of variable annuities without being detected by the insurance company or by mutual fund managers.

NASD determined that after the insurance company notified Herzog that it was exercising its contractual right to terminate transfer privileges on contracts, Herzog submitted new applications to the insurance company for the same product on behalf of the same business entities, sometimes listing another employee of the hedge fund client as the annuitant, and sometimes using different corporate identities with different account numbers and tax ID numbers in an attempt to avoid detection as a market timer. In fact, the annuitants were officers of employees of the hedge fund client. NASD determined that Herzog's conduct was intended to deceive the insurance company and allow the hedge fund client to continue trading contracts. NASD also found that Herzog continued to process orders to sell variable annuity policies for the hedge fund client after receiving written notice from the insurance company that it considered the client's trading strategy to be disruptive and contrary to the interest of long-term investors.

Herzog's suspension began July 18, 2005, and will conclude October 15, 2005. (NASD Case #CE2050013)

**Kyle Timothy Holland (CRD #2308543, Registered Principal, Austin, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity for one month, and suspended from association with any NASD member in any principal capacity for three months. Without admitting or denying the allegations, Holland consented to the described sanctions and to the entry of findings that he failed to ensure that his member firm included a \$500,000 settlement agreement as a liability of the firm. The findings stated that he filed inaccurate FOCUS Reports with NASD that significantly overstated the firm's net

capital position and Holland failed to give NASD notice of the firm's net capital deficiencies. The findings also stated that Holland participated in private securities transactions and failed to give his member firm prior notice of his transactions involving a stock, his role therein, and whether he might receive compensation in connection with the transactions.

Holland's suspensions began July 18, 2005; the suspension in any capacity will conclude at the close of business August 17, 2005, and the suspension in any principal capacity will conclude at the close of business October 17, 2005. (NASD Case #C06050016)

**Bambi Iris Holzer (CRD #1088028, Registered Representative, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$100,000, suspended from association with any NASD member in any capacity for 21 days, and required to attend and satisfactorily complete 16 hours of continuing education concerning variable annuities. Without admitting or denying the allegations, Holzer consented to the described sanctions and to the entry of findings that she made negligent misrepresentations to public customers regarding certain product features in connection with the purchase and sale of variable annuities.

Holzer's suspension began July 18, 2005, and concluded August 7, 2005. (NASD Case #C02050049)

**Scott West Jones (CRD #3083008, Registered Representative, Lake Forest, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Jones reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he impersonated another registered representative of his member firm who was scheduled to complete a firm element continuing education training module, and completed the training module in his place. The findings stated that following his completion of the training module, Jones submitted a completion certificate to the firm, falsely indicating that the other representative had completed the training module, causing the firm's books and records to be inaccurate.

Jones' suspension began August 1, 2005, and will conclude at the close of business January 30, 2007. (NASD Case #C02050050)

**Ram Kapara (CRD #2589146, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity and ordered to pay \$780,000,

plus interest, in restitution to public customers. The sanctions were imposed by the NAC following appeal of an OHO decision. The sanctions were based on findings that Kapara failed to respond to NASD requests for information and to appear for on-the-record interviews. The findings also stated that Kapara submitted a copy of his purported signed resignation letter bearing a date that was false and misleading to NASD. In addition, NASD found that Kapara made material misrepresentations to public customers in connection with the sale of securities to public customers. Moreover, NASD found that Kapara effected private securities transactions and failed to provide prior written notice to his member firm describing the proposed transaction, his proposed role therein, and stating whether he had or might receive compensation for it. The NAC reversed the finding that Kapara exercised discretion in the account of a public customer without the customer's written authorization and his firm's written acceptance of the account as discretionary. **(NASD Case #C10030110)**

**Michael Eugene Kelly (CRD #4447819, Registered Representative, Wadsworth, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any member of NASD in any capacity. Without admitting or denying the allegations, Kelly consented to the described sanction and to the entry of findings that he effected transactions in the account of a public customer without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs. **(NASD Case #C8A050069)**

**Sandeep David Kitson (CRD #2508526, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any member of NASD in any capacity for two years. The fine must be paid before Kitson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kitson consented to the described sanctions and to the entry of findings that he made unsuitable securities recommendations and executed unsuitable transactions for the accounts of public customers. The findings also stated that Kitson willfully failed to disclose material facts on his Form U4.

Kitson's suspension began July 18, 2005, and will conclude at the close of business July 17, 2007. **(NASD Case #C04050028)**

**Kevin Arthur Kowalczyk (CRD #2262204, Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Kowalczyk consented

to the described sanctions and to the entry of findings that he effected discretionary transactions in securities accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

Kowalczyk's suspension began August 1, 2005, and concluded at the close of business August 12, 2005. **(NASD Case #C8A050065)**

**Danny Carl Lancaster (CRD #2070421, Registered Representative, Toledo, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,333, including \$1,333 as disgorgement in commissions earned, and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Lancaster reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lancaster consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the accounts of public customers without having reasonable grounds to recommend that customers borrow 80 percent of their home equity by executing a 30-year mortgage in order to invest in mutual funds.

Lancaster's suspension began August 1, 2005, and will conclude at the close of business September 30, 2005. **(NASD Case #C8A050066)**

**Stephen Phillip Lewis (CRD #820773, Registered Principal, Boynton Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lewis consented to the described sanction and to the entry of findings that he engaged in an outside business activity for compensation without providing written notice to his member firm. The findings also stated that Lewis failed to respond to NASD requests for information. **(NASD Case #C07050047)**

**Esteban E. Llavallol (CRD #2879044, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Llavallol consented to the described sanctions and to the entry of findings that, while employed as a registered representative of a member firm, he handled securities transactions on behalf of a third-party money manager through the prime brokerage department of an affiliated broker-dealer of his member firm and caused \$2,249 to be transferred from an omnibus account established by the affiliated firm for the benefit of

the third-party money manager into an account maintained by Llavallol's father at his member firm. The findings also stated that Llavallol failed to obtain proper supervisory approval from his member firm and/or the affiliated broker-dealer to transfer these funds to his father's account.

Llavallol's suspension began August 1, 2005, and will conclude at the close of business August 19, 2005. **(NASD Case #C10050060)**

**David Keith Locy (CRD #817730, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Locy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Locy consented to the described sanctions and to the entry of findings that he engaged in an approved outside business activity where he was a third-party administrator for small 401(k) plans and failed to forward received checks promptly to the 401(k) plans.

Locy's suspension began July 18, 2005, and will conclude at the close of business January 17, 2006. **(NASD Case #C8A050050)**

**Juan Carlos Ly (CRD #2520403, Registered Representative, Maiden, North Carolina)** submitted an Offer of Settlement in which he was fined \$20,000, \$10,000 of which represents partial disgorgement of commissions, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Ly consented to the described sanctions and to the entry of findings that he did not have a reasonable basis for recommending variable annuity switches to public customers. NASD also found that Ly misrepresented on his member firm's variable products broker-dealer account form that a new variable annuity had a lower cost structure than the annuity being relinquished.

Ly's suspension began July 18, 2005, and concluded at the close of business August 12, 2005. **(NASD Case #C07040092)**

**Roger Parker May (CRD #717728, Registered Principal, Golden, Colorado)** was fined \$30,000, ordered to pay \$91,158 in restitution to a public customer, and suspended from association with any NASD member in any capacity for one year. The findings stated that May made an unsuitable recommendation to a public customer, and executed, or caused the execution of, unauthorized trading in the account of a public customer.

May's suspension began July 5, 2005, and will conclude July 4, 2006. **(NASD Case #C3A030050)**

**Frank Mayol (CRD #4494246, Registered Representative, Yonkers, New York)** was barred from association with any NASD member in any capacity for failure to respond to NASD requests for information. NASD also found that Mayol forged a public customer's signature on an IRA authorization for release of transfer of assets form without the customer's knowledge or authorization. **(NASD Case #C10040122)**

**Randy Lawrence McClure (CRD #1289750, Registered Principal, Dunedin, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before McClure reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McClure consented to the described sanctions and to the entry of findings that he failed to conduct the necessary due diligence prior to his member firm's sale of stock. The findings also stated that the shares of stock were received from affiliates of the issuer and were restricted because the stock was not registered and no applicable exemption from registration was available to the firm.

McClure's suspension began June 6, 2005, and concluded at the close of business June 17, 2005. **(NASD Case #CE3050008)**

**Rose Marie McKesson (CRD#1880804, Registered Representative, West Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McKesson consented to the described sanction and to the entry of findings that she converted \$92,000 from public customers for her personal use. **(NASD Case #C02050047)**

**William Ramey Mead, Jr. (CRD #330671, Registered Representative, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$88,000, including disgorgement of excessive commissions, and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Mead reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mead consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to public customers in that he offered Class B share mutual funds that were not the lowest-cost alternative available and recommended the use of margin to a public customer for the

purchase of mutual fund shares, which was unsuitable in view of the customer's limited assets, lack of investment experience, and knowledge.

Mead's suspension began July 5, 2005, and will conclude October 2, 2005. (NASD Case #C07050041)

**Robert Earl Messinger (CRD #1234161, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, ordered to pay \$30,711.71 in partial restitution to public customers, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Messinger consented to the described sanctions and to the entry of findings that he recommended that public customers purchase and accumulate large positions in mutual fund Class B shares and Class C shares without a reasonable basis to believe that the recommendations were suitable for each customer because the customers could have purchased Class A shares in each fund at a reduced sales charge by applying breakpoints, using letters of intent, and/or using rights of accumulation.

Messinger's suspension began July 18, 2005, and concluded at the close of business July 29, 2005. (NASD Case #C8A050053)

**Virginia Kaye Millage (CRD #4594079, Associated Person, Puyallup, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Millage consented to the described sanction and to the entry of findings that she converted proceeds totaling \$5,000 belonging to a public customer for her own use and benefit. (NASD Case #C3B050013)

**Steve Eric Milstein-Roth (CRD #2457324, Registered Representative, West Hollywood, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Milstein-Roth consented to the described sanction and to the entry of findings that he participated in private securities transactions without prior written notice to, or approval from, his member firm. The findings also stated that Milstein-Roth failed to respond to NASD requests for documents and information. (NASD Case #C02050035)

**John Daniel Minerva (CRD #2702468, Registered Principal, Jackson, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any member of NASD in any capacity. Without admitting or denying the allegations, Minerva consented to the described sanction and to the entry of findings that he participated in a private securities transaction

without prior written notice to, or prior written approval from, his member firm. The findings also stated that Minerva failed to respond to NASD requests for information. (NASD Case #C9B050043)

**Alfred Peter Montgomery (CRD# 4721887, Associated Person, Baton Rouge, Louisiana)** was barred from association with any NASD member in any capacity for failing to disclose material information on his Form U4. (NASD Case #C05040088)

**Paul Robert Olsen (CRD #2611306, Registered Principal, Denver, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Olsen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Olsen consented to the described sanctions and to the entry of findings that while recommending that his public customers exchange several annuities, he negligently failed to disclose to the customers the actual expenses associated with new annuities and the elected sub-accounts.

Olsen's suspension began July 18, 2005, and will conclude at the close of business August 16, 2005. (NASD Case #C3A050036)

**Anthony John Orlando, Jr. (CRD #2497838, Registered Principal, New York, New York)** and **Philip Anthony Orlando (CRD #2839212, Registered Principal, Pelham, New York)** were barred from association with any NASD member in any capacity. The sanctions were imposed by the NAC following appeal of an OHO decision. The sanctions were based on findings that the respondents failed to respond to NASD requests for documents and failed to appear for on-the-record interviews to provide testimony. (NASD Case #CMS030269)

**Bryan N. Polozola (CRD #4370964, Registered Principal, New York, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Polozola consented to the described sanction and to the entry of findings that he converted funds totaling \$49,350 from his member firm's bank account to his personal bank account for his own use and benefit. The findings also stated that Polozola failed to respond to NASD requests for information. (NASD Case #C10050023)

**Stephen Michael Rhoads, Sr. (CRD #3265781, Registered Representative, Wyckoff, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rhoads received checks



totaling \$3,677.42 from a public customer for investment purposes, deposited the checks into his own personal account, and personally paid the initial premium for the customer's disability insurance policy with a cashier's check. The findings stated that Rhoads set up a pre-authorization check premium payment service (PAC) to arrange for automatic monthly withdrawals from his personal account to pay the premium on the customer's policy, without the customer's knowledge, authorization, or consent. The findings also stated that because the PAC had insufficient funds to make the automatic premium payments, the disability policy lapsed due to nonpayment. In addition, the findings stated that Rhoads failed to respond to NASD requests for information and documents. (NASD Case #C10040116)

**Terry Lee Ringer (CRD #2309959, Registered Representative, Vienna, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ringer consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C9A050035)

**Eugene Paul Rivera (CRD# 4054915, Registered Representative, Hoboken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any member of NASD in any capacity for three months. The fine must be paid before Rivera reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rivera consented to the described sanctions and to the entry of findings that he recommended and effected a transaction in the account of a public customer without having a reasonable basis for believing the transaction was suitable based upon the customer's investment objectives, financial situation, and needs. The findings also stated that Rivera signed a public customer's name to a variable annuity surrender request form without the customer's knowledge, authorization, or consent.

Rivera's suspension began July 18, 2005, and will conclude at the close of business October 17, 2005. (NASD Case #C10050054)

**Edwin Rodriguez, Jr. (CRD #1952747, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Rodriguez consented to the described sanctions and to the entry of findings that he sent a letter to a public customer concerning a transaction in the customer's account that was not on firm letterhead,

was not made available for supervisory review, and was sent without his member firm's knowledge or consent.

Rodriguez's suspension began June 6, 2005, and concluded at the close of business June 17, 2005. (NASD Case #C10050020)

**David John Rossignol (CRD #2231527, Registered Principal, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 15 business days and suspended from association with any NASD member in any principal or supervisory capacity for 45 days. In light of the financial status of Rossignol, no monetary sanction has been imposed. Without admitting or denying the allegations, Rossignol consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to prevent the representative's violations and achieve compliance with applicable securities laws, regulations, and NASD rules. The findings also stated that Rossignol became concerned about the volatility of a stock the representative had purchased in several customer accounts before the representative's termination and liquidated the positions of some of the customers without their consent.

Rossignol's suspensions began June 6, 2005; the suspension in any capacity concluded June 24, 2005, and the suspension in any principal or supervisory capacity concluded July 20, 2005. (NASD Case #C11050010)

**David Alan Settle (CRD #4245687, Registered Representative, Nephi, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Settle consented to the described sanction and to the entry of findings that he obtained approximately \$88,000 from the securities accounts of public customers by causing unauthorized withdrawals from the accounts and used the funds for his personal benefit. (NASD Case #C3A050028)

**Mason Speed Sexton (CRD #819953, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any principal capacity for eight months. Without admitting or denying the allegations, Sexton consented to the described sanctions and to the entry of findings that he failed to supervise adequately the activities of a former trader at his member firm.

Sexton's suspension began August 1, 2005, and will conclude at the close of business March 31, 2006. (NASD Case #C10050062)

**Tomislav Skibola (CRD #2791236, Registered Representative, Long Island City, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Skibola consented to the described sanction and to the entry of findings that he executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Skibola engaged in the short-term trading of mutual fund shares in the account of a public customer, which was inconsistent with his fundamental responsibility for fair dealing with the customer, and also entailed the recommendation of securities transactions that were not suitable for the customer. In addition, NASD found that Skibola generated, or caused to be generated, false or inaccurate records in that he took actions to create the false appearance in firm records that the customer placed the orders via the Internet and were thus unsolicited when, in fact, Skibola caused the placement of the orders from his firm's offices. **(NASD Case #C10050042)**

**Jennifer Anne Stephenson (CRD #4156971, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity and ordered to pay \$3,700, plus interest, in restitution to a public customer. Restitution must be paid before Stephenson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Stephenson consented to the described sanctions and to the entry of findings that she converted funds belonging to a public customer by electronically transferring \$4,000 from the account of the customer to Stephenson's personal checking account and then using \$3,700 of the funds for her own use and benefit without the knowledge or consent of the customer. The findings also stated that Stephenson failed to respond to NASD requests for information. **(NASD Case #C8A050057)**

**Lawrence Lee Sullivan (CRD #2491233, Registered Principal, Honolulu, Hawaii)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sullivan consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information and documents. **(NASD Case #C01050011)**

**Clayton Richard Waldie (CRD #4476389, Registered Representative, Springfield, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, Waldie consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C04050027)**

**Michael Floyd Whitley (CRD #2259737, Registered Representative, Pineville, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any member of NASD in any capacity for 30 business days. The fine must be paid before Whitley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Whitley consented to the described sanctions and to the entry of findings that he effected discretionary trades in a public customer's account without obtaining discretionary authority from the customer in writing and without having the account accepted as discretionary by his member firm.

Whitley's suspension began July 18, 2005, and will conclude at the close of business August 26, 2005. **(NASD Case #C07050049)**

**Stephen Michael Williams (CRD #3185644, Registered Representative, Clarksburg, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he signed insurance policy delivery receipts as a witness to the signatures of public customers even though he had not actually witnessed any of the customers sign the delivery receipts.

Williams' suspension began August 1, 2005, and will conclude at the close of business August 31, 2005. **(NASD Case #C9B050040)**

**Jeffrey Scott Woods (CRD #4834919, Registered Representative, Weatherford, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any member of NASD in any capacity for 45 days. The fine must be paid before Woods reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Woods consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Woods' suspension began July 18, 2005, and will conclude at the close of business August 31, 2005. **(NASD Case #C06050018)**

**Martin Paul Lonski (CRD #1142988, Registered Representative, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Lonski consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts without written authorization from the customers and written acceptance of the accounts as discretionary from his member firm. **(NASD Case #C04050023)**

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Russell James Bjerke (CRD #3178233, Registered Representative, Ashland, Oregon)** was named as a respondent in an NASD complaint alleging that he received \$6,187 from a public customer for investment purposes, deposited the funds in a bank account under his control, and converted the funds to his own use and benefit without the customer's knowledge, authorization, or consent. The complaint also alleges that Bjerke failed to respond to NASD requests for information. **(NASD Case #C3B050015)**

**Daniel William Bukovcik (CRD #1684170, Registered Representative, Dewitt, Michigan)** was named as a respondent in an NASD complaint alleging that he affixed the signatures of public customers to account documents related to the purchases of mutual funds, variable products, annuities, and 529 plans without the written authorization of the customers; submitted the documents to his member firm; and failed to inform anyone at the firm that he had signed the customers' names to the forms. **(NASD Case #C8A050055)**

**Ronald Charles Crockett, Jr. (CRD #1682593, Registered Representative, West Chester, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he caused securities transactions to be effected in customers' IRA accounts and affixed, or caused to be affixed, signatures purporting to be that of customers to brokerage account agreements without the customers' authorization or consent. The complaint also alleges that Crockett failed to respond to NASD requests for information. **(NASD Case #C9A050034)**

**Stephen Patrick Dunbar (CRD #2041644, Registered Representative, Atlanta, Georgia)** was named as a respondent in an NASD complaint alleging that he engaged in

unsuitable trading in the accounts of public customers without the customers' knowledge or authorization. The complaint further alleges that he invested in unduly concentrated equity positions, engaged in excessive trading in equity stocks, provided false and misleading account summaries that concealed equity trading and margin debits, failed to disclose stock positions and margin debit balances, and falsely reported non-existent cash balances. In addition, the complaint alleges that Dunbar effected transactions in the accounts of public customers without written authority from the customers or acceptance of the accounts as discretionary by his member firm. **(NASD Case #C07050050)**

**Carole Gurgone Ferraro (CRD #1174904, Registered Representative, Boynton Beach, Florida)** was named as a respondent in an NASD complaint alleging that she recommended and effected investments in variable annuities in the accounts of public customers without having a reasonable basis for her recommendations based on the limited benefit available to the customers from either the death benefit or the tax deferral features of the variable annuities, the costs associated with the products, the limited liquidity, and the failure of the variable annuities to satisfy the customers' goals of income and safety. **(NASD Case #C05050005)**

**Heather Jannelle Furgason (CRD #4241326, Registered Representative, Kalamazoo, Michigan)** was named as a respondent in an NASD complaint alleging that she misused public customer's funds by effecting unauthorized money transfers from and between customers' bank accounts without the knowledge, authorization, or consent of the customers. **(NASD Case #C8A050054)**

**Gregory Gassoso (CRD #2873605, Registered Representative, Staten Island, New York)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. The complaint further alleges that Gassoso failed to forward incoming and outgoing electronic correspondence with a public customer to his member firm for review as required by the firm's written procedures. **(NASD Case #C10050048)**

**Arthur Harry Guterding, Jr. (CRD #1053453, Registered Representative, Henderson, Nevada)** was named as a respondent in an NASD complaint alleging that he obtained and exercised discretion in public customer accounts when he was prohibited from obtaining discretionary power by his member firm. **(NASD Case #C02050045)**

**Sherri Lynn Herrera (CRD #4491409, Registered Representative, Pueblo, Colorado)** was named as a respondent in an NASD complaint alleging that she received

\$718.44 from public customers in payment of premiums for insurance policies and used the funds for her own benefit without the customers' knowledge, authorization, or consent. The complaint also alleges that Herrera deposited \$153 to the account of a public customer three weeks after receiving the funds. **(NASD Case #C3A050029)**

**Karen Jean Hill (CRD #1018669, Registered Representative, Saginaw, Michigan)** was named as a respondent in an NASD complaint alleging that she recommended that public customers sell an existing mutual fund and purchase another mutual fund without any review of the customers' investment objectives, financial situation, and needs, and without reasonable efforts to obtain that information. The complaint also alleges that Hill, by the use or instrumentalities of interstate commerce or the mails, intentionally or recklessly misrepresented and employed devices to defraud public customers by making untrue statements of material fact and/or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading in connection with the purchase or sale of securities.

The complaint further alleges that Hill represented to customers that there would be no surrender charge or initial sales charge in connection with the mutual fund switches that she recommended when, in fact, there were charges associated with the switches. In addition, the complaint alleges that Hill arranged for the customers to sign blank switch forms, filled in the correct surrender charge and initial sales charge as well as placed false and inaccurate reasons for the mutual fund switch on the switch forms, and submitted the forms to her member firm's principal review desk for approval. Furthermore, the complaint alleges that Hill created false documents purporting to show that the customers acknowledged the information on the switch forms and submitted them to her member firm as accurate switch forms. **(NASD Case #C8A050060)**

**Cesar Roel Perez (CRD #3091992, Registered Representative, Olmito, Texas)** was named as a respondent in an NASD complaint alleging that he converted at least \$125,000 from public customers without the customers' knowledge, authorization, or consent. The complaint also alleges that Perez failed to respond to NASD requests for information and to appear for an on-the-record interview to provide testimony. **(NASD Case #C06050019)**

**Jack Mace Schwartz (CRD #1027281, Registered Principal, Salina, Kansas)** was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations

to public customers without having reasonable grounds for believing that his recommendations were suitable for the customers based on their financial situation and needs. **(NASD Case #C04050024)**

**Wanda Pittman Sears (CRD #2214419, Registered Representative, Roanoke, Virginia)** was named as a respondent in an NASD complaint alleging that she failed to provide her member firm with written notice of her outside business activity and effected transactions in the accounts of public customers without prior authorization from the customers. The complaint also alleges that Sears forged, or caused to be forged, customer signatures on forms establishing investment advisory services and payment for the services. **(NASD Case #C07050042)**

**Jon Martee Wade (CRD #1642488, Registered Representative, Little Rock, Arkansas)** was named as a respondent in an NASD complaint alleging that he purchased and sold mutual fund shares and municipal bonds in the account of a public customer that was excessive. The complaint also alleges that Wade's trading activity in the customer's account was without reasonable grounds for believing the recommendations and transactions were suitable in view of the frequency and nature of the recommended transactions, the customer's age, sophistication, and financial condition. In addition, the complaint alleges that Wade failed to respond to NASD requests for information and documents. **(NASD Case #C8A050048)**

### **Firm Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Sands Brothers & Co. Ltd**  
New York, New York  
(June 20, 2005 – June 28, 2005)



### **Firm Suspended for Failure to Supply Financial Information**

The following firm was suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Investment Researched Plans, Inc.**  
Los Angeles, California  
(July 11, 2005–July 28, 2005)

### **Individuals Suspended Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Hunter, Robin C.**  
Mesa, Arizona  
(June 21, 2005)

**Motarjeme, Richard Kevin**  
Denver, Colorado  
(June 20, 2005)

**Ornelas, Joe Samora**  
Albuquerque, New Mexico  
(June 20, 2005)

### **Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210**

**Lowe, Phillip Alexander**  
Los Angeles, California  
(June 27, 2005)

**Morris, Frank Caleal**  
Ann Arbor, Michigan  
(June 20, 2005)

### **Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Bartlett, Brian Lee**  
Austin, Texas  
(June 20, 2005–June 23, 2005)

**Belmonte, Noel James**  
Bellport, New York  
(June 27, 2005)

**Bravin, Erik Anthony**  
Staten Island, New York  
(July 5, 2005)

**Cordery, Will**  
Las Vegas, Nevada  
(June 30, 2005)

**Cuillo, Robert James**  
Kings Park, New York  
(June 14, 2005)

**Febert, Michael Jeffrey**  
Olympia, Washington  
(July 11, 2005)

**Ikwue, Sunny Michael**  
Queens Village, New York  
(July 18, 2005)

**Misaraca, Kimberly Jean f/k/a Kimberly Carrella**  
Bellport, New York  
(June 27, 2005)

**Moyer, Jr., Kenneth William**  
Orlando, Florida  
(July 18, 2005–August 1, 2005)

**Nickens, Larry Bernard**  
Brooklyn, New York  
(June 14, 2005)

**Zeidenfeld, Jr., Ilya Steven**  
New York, New York  
(July 7, 2005)

## NASD Orders Morgan Stanley to Pay over \$6.1 Million for Fee-Based Account Violations

### Firm's Customers to Receive \$4.6 Million in Restitution

NASD fined Morgan Stanley DW, Inc., \$1.5 million and has ordered the firm to pay more than \$4.6 million in restitution for failing to adequately supervise its fee-based brokerage business. More than 3,500 Morgan Stanley customers will be receiving restitution.

Fee-based brokerage accounts are an alternative to traditional commission-based accounts. In a fee-based account, a customer is charged an annual fee that is either fixed or a percentage of the assets in the account, rather than a commission for each transaction as in a traditional brokerage account.

"Fee-based accounts can be appropriate for a wide range of customers," said NASD Vice Chairman Mary L. Schapiro. "But firms have an obligation to their customers to periodically reassess whether a fee-based account, like that offered by Morgan Stanley, remains appropriate. Firms must have systems and procedures in place that adequately evaluate the continued appropriateness of these accounts for their customers."

The Securities and Exchange Commission issued a report (commonly known as the "Tully Report") in 1995, noting that fee-based accounts are appropriate for investors who are building assets in their accounts, and may be appropriate for investors with moderate trading activity. But it also noted that because of the imposed annual fee, small and low-trading-activity accounts would pay higher costs as a fee-based account than as a commission-based account.

The following year, Morgan Stanley began offering its customers a fee-based brokerage account program, called "Choice." NASD found that Morgan Stanley recognized and instructed its brokers, consistent with the Tully Report, that Choice accounts were not appropriate for certain categories of investors, including buy-and-hold customers and certain accounts that fall below \$50,000. The firm typically required a minimum of \$50,000 in eligible assets to open a Choice account and charged an annual fee based on the total amount and type of eligible assets held in the account.

NASD found that between 2001 and 2003, all Choice accounts, regardless of size, paid a minimum annual fee of \$1,000. By the end of 2001, the firm had 129,630 Choice accounts, holding \$19.8 billion in assets. By the end of 2002, there were 157,143 Choice accounts, holding over \$21.2

billion in assets. Morgan Stanley had 176,274 Choice accounts holding \$30.6 billion in assets by the end of 2003.

NASD's investigation showed that from January 2001 through December 2003, Morgan Stanley failed to establish and maintain a supervisory system reasonably designed to review and monitor its fee-based brokerage business to determine whether Choice accounts remained appropriate for its Choice customers. As a result of the firm's deficient system and procedures, Morgan Stanley allowed 3,549 of its customers to continue using Choice accounts without adequately reassessing whether the accounts remained appropriate for them. These customers, who either conducted no trades in their Choice accounts for at least two consecutive years or had Choice accounts whose assets averaged below \$25,000 for at least one full year, or both, will be receiving restitution under the settlement announced today.

NASD found that Morgan Stanley's written procedures did not prescribe a system for ongoing supervisory review of the appropriateness of Choice accounts until June 2003. Beginning in December 2003, the firm's branch managers began receiving monthly exception reports based on a suppressed-commission-to-fee ratio for all Choice accounts with an anniversary date within that month. At that time, Morgan Stanley provided the branch managers with specific guidance on the review to be conducted and the specific actions to be taken with respect to accounts that appeared on the exception report. Although the firm improved its system and procedures, Morgan Stanley's system and procedures still were fundamentally flawed, in that the exception reports failed to capture any accounts that fell below \$50,000 in assets.

NASD also found that between January 2001 and December 2003, there were 1,818 Choice customers whose billable asset level averaged below \$25,000 for at least one full year. Morgan Stanley's supervisory system failed to capture these accounts, so the firm failed to conduct an adequate supervisory review to determine whether the accounts should remain in the Choice program. All of these customers paid at least the minimum annual fee of \$1,000 applicable at the time, which represented at least four percent of the assets in their Choice accounts-well in excess of Morgan Stanley's stated maximum rate of 2.25 percent. Those customers paid a total of \$2.7 million in Choice fees.

In addition, NASD found that 2,062 customers conducted no trades in at least two consecutive Choice years. Although many of these customers had traded previously in their Choice accounts, after these customers went an entire Choice year without trading, the firm's system and procedures failed to determine whether these accounts remained appropriate for Choice. Consequently, without an adequate supervisory review

of their particular circumstances, these 2,062 customers remained in Choice for at least an additional year, in which they incurred an additional \$2.8 million in fees without conducting any trades.

In sanctioning Morgan Stanley, NASD took into account the firm's demonstrable steps, undertaken shortly after NASD's inquiry began, to enhance its system and procedures and which led to the firm's identification and removal of large numbers of accounts for which the Choice program was not appropriate.

In settling these matters, the firm neither admitted nor denied the charges, but consented to the entry of NASD's findings.

This case is part of NASD's continuing focus on fee-based brokerage accounts. In April, NASD fined Raymond James & Associates, Inc., \$750,000 and ordered the firm to pay \$138,000 in restitution for fee-based account violations. In November 2003, NASD issued Notice to Members 03-68, reminding firms that before opening a fee-based account they must have "reasonable grounds for believing that a fee-based program is appropriate for that particular customer"—taking into account the services provided, the projected cost to the customer, alternative fee structures available and the customer's fee structure preferences. In that notice, firms were also reminded that after a fee-based account has been opened, firms should implement procedures requiring a periodic review to determine whether the fee-based account remains appropriate for each of their customers.

## **NASD Fines Hornor, Townsend & Kent, Inc., \$325,000 for Improper Sales Contests, Email and Supervision Violations**

### **Firm Ordered to Prohibit Variable Product Sales Contests for Three Years**

NASD fined Hornor, Townsend & Kent, Inc. (HTK), of Horsham, PA, \$325,000 for conducting prohibited sales contests for its brokers and managers, as well as for email and supervision violations. The contests violated NASD rules by awarding exclusive or greater weight to the sales of proprietary variable life and variable annuity products over non-proprietary products, thereby creating improper incentives for brokers to sell those products instead of focusing on the investment's merits and the customer's financial interests. In resolving this matter, HTK agreed to prohibit any sales contests promoting the sale of variable life or annuity products for the next three years.

NASD also found that HTK failed to retain the email communications of approximately 83 employees. Those employees included HTK's president and two other senior managers, who approved at least some of the violative

national sales contests. NASD rules require that email communications be retained for at least three years.

"By favoring the sale of some variable life and annuity products over others, these contests created conflicts of interest that could undermine the broker's obligation to recommend suitable investments based on the needs of the customer," said NASD Vice Chairman Mary L. Schapiro. "NASD rules are designed to prevent such conflicts between the broker's self-interest and the customer's."

Between 2001 and 2003, HTK conducted six national and numerous branch office sales contests to promote the sale of variable life and variable annuity products. When a firm stages a sales contest for a particular product line, NASD rules require that it cover all products the firm offers within that line, and that equal weight be given to the sales of all products within that line.

NASD found that several of the national sales contests were based only on the sale of variable products offered by Penn Mutual Life Insurance Company, HTK's parent company. In determining the winners for some of the national contests, sales of Penn Mutual variable life products were given exclusive or greater weight than sales of Penn Mutual variable annuity products.

HTK offered or awarded substantial rewards for the national contest winners, including weekend trips to New York City, New Orleans, and Las Vegas; vouchers worth \$400 or \$800 that could be used for personal entertainment or education; and gift cards that could be used to purchase items from a number of brand-name merchants. The total value of the national sales contest awards exceeded \$200,000.

Between 2001 and 2003, HTK's branch offices conducted additional sales contests. Nine were based solely on the sale of proprietary Penn Mutual variable products. In another four, sales of proprietary products were given greater weight than sales of non-proprietary products. Prizes for the branch contests included such items as golf trips, tickets to sporting events and other entertainment events, dinners, high-definition television sets, and other expensive electronic goods.

NASD found that the non-cash compensation that HTK provided to its sales force was substantial enough to provide the improper incentives that the non-cash compensation rules were designed to prevent.

NASD also found that HTK did not have in place an adequate supervisory system and procedures with respect to the non-cash compensation rules.

In settling this matter, the firm neither admitted nor denied the charges, but consented to the entry of NASD's findings.